



Department of Energy

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U S Environmental Protection Agency  
Region VIII  
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Gentlemen,

The Department of Energy/Rocky Flats Office (DOE/RFO) is hereby providing the written statement of dispute in regard to the Colorado Department of Health, Hazardous Materials and Waste Management Division (CDH), and the Environmental Protection Agency's request to complete and implement a Pond Water Management Interim Measure/Interim Remedial Action (IM/IRA) for management of the A-series ponds, B-series ponds, Pond C-2, and the Landfill Pond under CERCLA/RCRA

DOE/RFO's dispute is premised on the inconsistencies created by the implementation of this IM/IRA, in contrast with legal requirements and guidance establishing the IM/IRA process. The current surface water management strategy does not meet the criteria for instituting the IM/IRA process. We believe the draft scoping document has shown that no further action is necessary, that pond water management should continue under the Clean Water Act, and that this is consistent with the IAG and all applicable state and federal regulations.

We believe the concerns articulated by EPA regarding surface water management do not meet the criteria for an IM/IRA for the following reasons:

- Inconsistent with guidance and regulations. The IAG states in Part 3, Section C, and Part 51, Paragraph 256, that the parties should follow all applicable laws, regulations, and guidance. The action to require an IM/IRA in this case is inconsistent with factors prescribed in the National Contingency Plan.
- Regulatory requirements. Discharges from the terminal ponds currently meet all National Pollutant Discharge Elimination System (NPDES) limits. Additionally, terminal pond discharges for the last three years have met all Big Dry Creek Segment 4 water quality standards without treatment, indicating that current surface water management activities, including spill control, have been effective in controlling pollutants.

ADMIN RECORD

A-0006-000003

An additional option of using the influent/effluent storage tanks prescribed in the new draft National Pollutant Discharge Elimination System (NPDES) permit for capturing spills is being investigated


- Consistent with Best Management Practices (BMPs) The EPA Operations Branch in Washington D C has cited in a report, and verbally, that stormwater management structures, such as retention ponds, are examples of BMPs for stormwater control and treatment
- Cleanup of pond sediments addressed in Operable Units (OU) The contamination of concern with some of the ponds is within the sediments of the ponds, not the water The IAG has set schedules and milestones for OU work to address these contaminated sediments, and OU work should be integrated with current surface water management activities

Also, the OU-7 managers have decided to begin scoping an OU-7 IM/IRA to address leachate from the landfill that is currently entering the landfill pond

DOE does not believe that an IM/IRA is the proper vehicle to accommodate competing demands among various water programs under the Clean Water Act, CERCLA, and RCRA To avoid duplication, other options, including a Comprehensive Watershed Management Plan, would be better suited to address water management and water quality issues

We would like to initiate informal dispute resolution discussions with your agencies as soon as possible If you have any questions regarding these issues, please contact me at 966-4888

Sincerely,



Richard J. Schassburger  
Acting Deputy Manager  
for Environmental Restoration

cc  
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